

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION

AT RICHMOND, NOVEMBER 23, 2015

SCC-CLERK'S OFFICE
SECURITIES CONTROL CENTER
2015 NOV 23 A 10:40

COMMONWEALTH OF VIRGINIA, *ex rel.*

STATE CORPORATION COMMISSION

v.

CASE NO. SEC-2015-00011

NEXT FINANCIAL GROUP, INC.,
Defendant

SETTLEMENT ORDER

The State Corporation Commission's ("Commission") Division of Securities and Retail Franchising ("Division") conducted an investigation of NEXT Financial Group, Inc. ("Defendant") pursuant to § 13.1-518 of the Virginia Securities Act ("Act"), § 13.1-501 *et seq.* of the Code of Virginia ("Code").

The Defendant has been registered as a broker-dealer with the Commonwealth of Virginia ("Virginia") since March 1999. From March 2008 until January 2013, the Defendant employed Erryn M. Barkett ("Barkett") as a registered broker-dealer agent. Beginning in April 2011 and ending in November 2011, the Division alleges Barkett sold approximately \$445,000 in unregistered securities in the form of seven investment contracts issued by Voyager Financial Group, LLC ("Voyager") to four Virginia investors. All four of these Voyager investors were the Defendant's clients at the time of the sale.

Voyager was a Delaware limited liability company with a principal business address in Little Rock, Arkansas. Voyager identified pension income stream sellers, usually retired or disabled veterans, receiving either monthly pension payments or disability payments ("pensioner"). Voyager and others recruited Barkett to become part of Voyager's network of independent sales agents. As an independent sales agent, Barkett sought out and solicited

individuals to purchase contractual assignments of pension or disability income streams in exchange for sales commissions.

Voyager and its sales agents promoted financial arrangements between investors and the pensioners whereby, for a lump-sum payment from the investor, the pensioner assigned to the investor the right to receive an income stream from the pensioner's monthly pension or disability payments for a predetermined period of time, typically several years. The investors never received an ownership interest in the underlying asset that provided the payments to the pensioner.

Voyager drafted and supplied all of the paperwork and contracts signed by the investors. Voyager provided Barkett with spreadsheets listing the various pension types and payment amounts for sale. Investors received monthly payments from the pensioners, facilitated by an escrow company which Voyager controlled. However, in marketing the product, Voyager and its sales agents, including Barkett, failed to disclose material risk regarding the potential for pensioners to redirect payments away from the Voyager-controlled escrow company, thereby discontinuing payments to the investors. This is known as a "redirect." If a pensioner ceases to send their monthly pension or disability payment to the Voyager-controlled escrow company and consequently to the investor (redirect), the investor must rely upon their contract with the pensioner to enforce their legal claim to the income stream. The Division contends neither Voyager nor the agents, including Barkett, adequately disclosed this redirect risk to potential investors.

All seven Voyager products the Defendant's clients purchased are no longer performing. As a result, these clients have lost approximately \$330,000. The Defendant's employee at the time, Barkett, provided investors with Voyager's marketing materials and contracts. These

materials did not mention the redirect risk and the potential risk of default of Voyager's products to Voyager investors.

Based on the investigation, the Division alleges the Defendant violated 21 VAC 5-20-260 B of the Commission's Rules governing Broker-Dealers, Broker-Dealer Agents and Agents of the Issuer, 21 VAC 5-20-10 *et seq.*, by failing to exercise diligent supervision over the securities activities of its agent, Barkett.

If the provisions of the Act are violated, the Commission is authorized by § 13.1-506 of the Act to revoke a defendant's registration, by § 13.1-519 of the Act to issue temporary or permanent injunctions, by § 13.1-518 A of the Act to impose costs of investigation, by § 13.1-521 A of the Act to impose certain monetary penalties, by § 13.1-521 C of the Act to order a defendant to make rescission and restitution, and by § 12.1-15 of the Code to settle matters within its jurisdiction.

The Defendant neither admits nor denies these allegations but admits to the Commission's jurisdiction and authority to enter this Settlement Order ("Order").

Prior to the entry of this Order, the Defendant paid \$113,333.33 to a Voyager-purchasing client to settle a Statement of Claim that the client filed with the Financial Industry Regulatory Authority. In addition, the Defendant offered its other Voyager-purchasing clients \$141,405.69 in restitution.

As a proposal to settle all matters arising from these allegations, the Defendant has made an offer of settlement to the Commission wherein the Defendant will abide by and comply with the following terms and undertakings:

(1) The Defendant will pay to the Treasurer of Virginia ("Treasurer"), contemporaneously with the entry of this Order, the amount of Ten Thousand Dollars (\$10,000) in monetary penalties.

(2) The Defendant will pay to the Treasurer, contemporaneously with the entry of this Order, the amount of Eight Thousand Dollars (\$8,000) to defray the costs of investigation.

(3) The Defendant will not violate the Act in the future.

The Division has recommended that the Commission accept the offer of settlement of the Defendant.

NOW THE COMMISSION, having considered the record herein, the offer of settlement of the Defendant, and the recommendation of the Division, is of the opinion that the Defendant's offer should be accepted.

Accordingly, IT IS ORDERED THAT:

(1) The offer of the Defendant in settlement of the matter set forth herein is hereby accepted.

(2) The Defendant shall fully comply with the aforesaid terms and undertakings of this settlement.

(3) This case is dismissed, and the papers herein shall be placed in the file for ended causes.

Dismissal of this case does not relieve the Defendant from its reporting obligations to any regulatory authority.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
 John T. Unger, General Counsel, 2500 Wilcrest Drive, Suite 620, Houston, Texas 77042; and a
 copy shall be delivered to the Commission's Office of General Counsel and Division of
 Securities and Retail Franchising.

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NEXT FINANCIAL GROUP, INC.,

Defendant

ADMISSION AND CONSENT


NEXT Financial Group, Inc. ("Defendant"), admits to the jurisdiction of the State Corporation Commission ("Commission") as to the party and subject matter hereof and, neither admitting nor denying the allegations made herein by the Division of Securities and Retail Franchising, hereby consents to the form, substance and entry of the foregoing Settlement Order ("Order").

The Defendant further states that no offer, tender, threat or promise of any kind whatsoever has been made by the Commission or any member, subordinate, employee, agent or representative thereof in consideration of the foregoing Order.

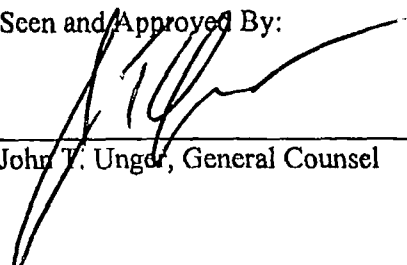
NEXT Financial Group, Inc.

Date: November 10, 2015

By:


Barry G. Knight, President

Seen and Approved By:


John T. Unger, General Counsel

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